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FILED
Clerk
District Court

MAY 03 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE
THE NORTHERN MARIANA ISLANDS**

AUTO MARINE, INC., ROLANDO) CIVIL ACTION No. 05-0042
SENORAN, BENJAMIN T. SANTOS)
AUGSTO SANTOS and NORMANDY)
SANTOS)

Plaintiffs)

v.)

AMENDED COMPLAINT

ANTONIO SABLAN, personally,)
RICHARD T. LIZAMA, personally and)
in his official capacity, and MEL GREY)
in his official capacity)

Defendants.)

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. §
1331 and 1343.

2. Plaintiff Auto Marine, Inc., ("Auto Marine") is a corporation formed

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- 1 under laws of the Commonwealth of the Northern Mariana Islands
- 2 ("Commonwealth").
- 3
- 4 3. Plaintiffs Rolando Senoran ("Senoran"), Benjamin T.
- 5 Santos("Benjamin"), and Augusto Santos ("Augusto") and Normandy
- 6 Santos ("Normandy") are each citizens of the Philippines.
- 7
- 8 4. The Commonwealth ("CNMI") is the governmental entity established
- 9 pursuant to the Covenant to Establish a Commonwealth of the
- 10 Northern Mariana Islands In Political Union With The United States
- 11 of America ("Covenant").
- 12
- 13 5. The Division of Immigration Services ("DIS") is an agency or
- 14 instrumentality of the Commonwealth government.
- 15
- 16 6. Defendant Mel Grey is currently the Director of DIS.
- 17
- 18 7. Defendant Antonio Sablan ("Sablan") is a CNMI citizen and resident.
- 19
- 20 8. Defendant Richard T. Lizama ("Lizama") is a CNMI citizen and
- 21 resident.
- 22
- 23 9. Pursuant to the Covenant, the United States immigration laws do not
- 24 apply except for a few provisions relating to citizenship by birth and
- 25 citizenship arising from the implementation of the Covenant.
- 26
- 27 10. As a result of the Covenant provision relating to immigration, the
- 28

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Commonwealth possesses its own control over the immigration of
aliens.

11. This local control over the immigration of aliens has resulted in the
Commonwealth establishing a system which allows employers to hire
aliens to work within the Commonwealth.

12. At all times relevant herein, Plaintiffs Senoran, Benjamin, Augusto
and Normandy were lawfully present in the Commonwealth.

13. At all times relevant herein, Plaintiffs Senoran, Benjamin, Augusto
and Normandy were lawfully employed with Auto Marine pursuant to
an employment contract approved by the Commonwealth's Director
of Labor.

14. DIS is responsible for the supervision, administration and
enforcement of the Commonwealth's immigration laws.

15. Sablan, at all times relevant herein was the Acting Director of DIS.

16. Sablan, as Acting Director of DIS, possessed the responsibility of
supervising, administering and enforcing the Commonwealth's
immigration laws.

17. Lizama is employed with DIS as an Immigration Investigator.

18. Lizama, assists the DIS Director in the enforcement of the

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Commonwealth's immigration laws.

19. Sablan, as Acting Director of DIS, possessed the authority and responsibility of supervising Lizama actions regarding immigration matters.

20. Sablan, as Acting Director of DIS, possessed the authority and responsibility of training Lizama in connection with Lizama's performance of his duties.

21. Auto Marine operates a business which engages in water sport activities which include but are not limited to parasailing, banana boat rides, scuba diving, and transporting passengers.

22. Senoran is currently employed by Auto Marine and has been employed with Auto Marine since 2002.

23. Senoran has been employed by Auto Marine as a Diving Manager since 2003.

24. In July, 2002 Senoran was licensed by the United States Coast Guard ("USCG") as a U.S. Merchant Marine Officer.

25. The expiration of Senoran's USCG license is July 17, 2007.

26. Senoran's USCG license, at all times relevant herein, was and is valid

27. Senoran's license from the USCG allows him to operate uninspected

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- 1 undocumented passenger vessels as defined in 46 U.S.C. § 2101(42)
2 upon near coastal waters not more than 100 miles offshore.
- 3 28. Benjamin is currently employed by Auto Marine and has been
4 employed by Auto Marine since 1999.
- 5 29. Each employment contract between Benjamin and Auto Marine was
6 approved by the Commonwealth Director of Labor as required by
7 Commonwealth law.
8
- 9 30. At all times relevant herein, the employment contract between
10 Benjamin and Auto Marine expressly allowed Benjamin to operate or
11 drive a boat or boats and vehicles as necessary.
12
- 13 31. In February, 2003 Benjamin was licensed by the United States Coast
14 Guard ("USCG") as a U.S. Merchant Marine Officer.
15
- 16 32. The expiration of Benjamin's USCG license is February 3, 2009.
17
- 18 33. Benjamin's USCG license, at all times relevant herein, was and is
19 valid.
20
- 21 34. Benjamin's license from the USCG allows him to operate uninspected
22 undocumented passenger vessels as defined in 46 U.S.C. § 2101(42)
23 upon near coastal waters not more than 100 miles offshore.
24
- 25 35. Normandy is currently employed by Auto Marine and has been
26

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1 employed by Auto Marine since 2001.

2 36. Each employment contract between Normandy and Auto Marine was
3 approved by the Commonwealth Director of Labor as required by
4 Commonwealth law.
5

6 37. In August, 2003 Normandy was licensed by the United States Coast
7 Guard ("USCG") as a U.S. Merchant Marine Officer.
8

9 38. The expiration of Normandy's USCG license is August 7, 2008.

10 39. Normandy's USCG license, at all times relevant herein, was and is
11 valid.
12

13 40. Normandy's license from the USCG allows him to operate
14 uninspected undocumented passenger vessels as defined in 46 U.S.C.
15 § 2101(42) upon near coastal waters not more than 100 miles
16 offshore.
17

18 41. Attached hereto as Exhibit 1 are copies of the USCG licenses for
19 Senoran, Benjamin, and Normandy.
20

21 42. Augusto is currently employed by Auto Marine and has been
22 employed by Auto Marine since 2004.
23

24 43. Each employment contract between Augusto and Auto Marine was
25 approved by the Commonwealth Director of Labor as required by
26

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Commonwealth law.

44. At all times relevant herein, the employment contract between Augusto and Auto Marine expressly allowed Augusto to operate or drive a boat or boats as necessary.

45. The boats owned by Auto Marine fall within the definition of 46 U.S.C. § 2101(42)

46. The boats owned by Auto Marine do not weight more than 100 gross registered tons.

47. On or about February 14, 2005, Senoran, Benjamin, Augusto and Normandy were arrested for allegedly violating Commonwealth law by operating a boat owned by Auto Marine.

48. Senoran, Benjamin, Augusto and Normandy were arrested for allegedly violating 3 CMC § 4434(e)(1) which provides that:

[t]he Director of Labor shall not approve nonresident worker certificates for the following job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger, receptionist, surface tour boat operator, bus driver, including tour bus driver, and telephone switchboard operator.

49. At the time of his arrest, Senoran was employed by Auto Marine as a Diving Manager.

1 50. At the time of his arrest, Benjamin was employed by Auto Marine as
2 a Manager.

3 51. At the time of his arrest, Augusto was employed by Auto Marine as a
4 helper mechanic.

5
6 52. At the time of his arrest, Normandy was employed by Auto Marine as
7 a Water Transportation Engineer.

8
9 53. Deportation proceedings have been instituted against Senoran,
10 Benjamin, Augusto, and Normandy on the basis of the alleged
11 violation of 3 CMC § 4434(e)(1).

12
13 54. Additionally, on September 6, 2005 criminal charges were instituted
14 against Auto Marine's president, Adonis Santos, for employing
15 aliens, i.e., Senoran, Benjamin, Augusto, and Normandy, that between
16 on or about January 3, 2005 to February 14, 2005 when they did not
17 have "lawful documentation and authority to be so employed."
18

19
20 55. A copy of the criminal information is attached hereto as Exhibit 2.

21 56. At all times between January 3, 2005 and February 14, 2005,
22 Senoran, Benjamin, Augusto, and Normandy possessed valid
23 employment contracts with Auto Marine approved by the
24 Commonwealth Director of Labor.
25
26

1 57. At all times between January 3, 2005 and February 14, 2005, the job
2 classifications held by Senoran, Benjamin, Augusto, and Normandy
3 in the employment contracts approved by the Director of Labor were
4 not prohibited job classifications under 3 CMC § 4434(e)(1).
5

6 58. Although criminal charges were brought against Adonis, he was not
7 arrested.
8

9 59. The Commonwealth obtained a penal summons instead of an arrest
10 warrant for his appearance.
11

12 60. At all times relevant herein, Senoran, Benjamin, Augusto and
13 Normandy were lawfully in the Commonwealth
14
15

16 **FIRST CLAIM FOR RELIEF**

17 61. Auto Marine realleges and incorporates ¶¶ 1 - 60 of this complaint.
18

19 62. At all times relevant herein Sablan, in his official capacity, and Grey
20 and as his successor were and are acting under color of
21 Commonwealth law in exercising the authority and powers as
22 Director of DIS.
23

24 63. The arrests of Senoran, Benjamin, Augusto and Normandy and the
25 criminal charges brought against Adonis has disrupted Auto Marine's
26
27
28

business and has caused it to suffer harm and injury.

64. 3 CMC § 4434(e)(1) purportedly prohibits Senoran, Benjamin, Augusto and Normandy from being employed in certain job classifications simply because they are aliens.

65. 3 CMC § 4434(e)(1) deprives Auto Marine and its employees, Senoran, Benjamin, Augusto and Normandy, of equal protection of the law in that it restricts employment of persons solely on the basis of alienage.

66. There is not any, or rational basis for precluding aliens from operating a surface tour boat or driving a commercial vehicle as precluded by 3 CMC § 4434(e)(1) does not serve any compelling governmental reason, is not substantially related to any important governmental objective and does not have any rational relationship to any legitimate governmental objective.

67. 3 CMC § 4434(e)(1) is unenforceable on its face as it violates the equal protection clause of the 14th Amendment of the United States Constitution.

68. 3 CMC § 4434(e)(1) is unenforceable as it violates the equal protection clause of the 14th Amendment of the United States

1 Constitution as interpreted and applied against Auto Marine and its
2 employees.

- 3 69. Auto Marine is entitled to declaratory and injunctive relief under 42
4 U.S.C. § 1983 to preclude enforcement of 3CMC § 4434(e)(1).
5

6
7 SECOND CLAIM FOR RELIEF
8

- 9 70. Auto Marine realleges and incorporates ¶¶ 1 - 67 of this amended
10 complaint.

- 11 71. At all times relevant herein Sablan, in his official capacity, and Grey
12 and as his successor, were and are acting under color of
13 Commonwealth law in exercising the authority and powers as
14 Director of DIS.
15

- 16 72. The United States has sovereignty over the coastal waters of the
17 Commonwealth.
18

- 19 73. The USCG licenses of Senoran, Benjamin, and Normandy authorizes
20 them to operate certain vessels in the near coastal waters of the
21 United States which includes the coastal waters of the
22 Commonwealth.
23

- 24 74. The United States laws governing the coastal waters are superior to
25
26

the Commonwealth laws concerning the coastal waters.

75. 3 CMC § 4434(e)(1) is unenforceable as interpreted and applied against Auto Marine and its employees as federal law is Supreme to Commonwealth law in connection with regulating the activities on the near coastal waters.

76. Auto Marine is entitled to declaratory and injunctive relief under 42 U.S.C. § 1983 to preclude enforcement of 3CMC § 4434(e)(1).

THIRD CLAIM FOR RELIEF

77. Auto Marine, Senoran, Benjamin, Augusto, and Normandy each realleges and incorporates ¶¶ 1 - 76 of this amended complaint.

78. At all times relevant herein Sablan was acting under color of Commonwealth law.

79. At all times relevant herein, DIS had a policy, custom, pattern and practice of arresting and seeking deportation of aliens who were lawfully in the Commonwealth and lawfully employed in the Commonwealth but who allegedly were (1) operating a boat as part of their employment or (2) operating a motor vehicle as part of their employment ("DIS Policy").

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1 80. Sablan authorized, condoned, and acquiesced in this DIS policy.

2 81. The DIS policy authorized, condoned, and acquiesced in by Sablan
3 ignores, disregards or otherwise tramples upon the equal protection
4 rights and liberty interests of Auto Marine, Senoran, Benjamin,
5 Augusto, and Normandy.
6

7 82. Auto Marine, Senoran, Benjamin, Augusto, and Normandy each
8 possessed a right to be free from discrimination in employment based
9 solely on alienage in absence of a compelling state interest.
10

11 83. Sablan knew or should have known that the DIS policy was
12 discriminatory and in violation of the equal protection clause of the
13 14th Amendment.
14

15 84. Sablan knew or should have known that enforcing the DIS Policy
16 would cause harm and injury to alien employees lawfully with in the
17 Commonwealth as well as the employers of aliens lawfully allowed to
18 work in the Commonwealth.
19

20 85. Enforcement of the DIS Policy against Auto Marine and its alien
21 employees has caused and continues to cause Auto Marine to suffer
22 injury and damage.
23

24 86. Enforcement of the DIS Policy against Senoran has caused and
25
26

- 1 continues to cause Senoran to suffer injury and damage.
- 2 87. Enforcement of the DIS Policy against Benjamin has caused and
- 3 continues to cause Benjamin to suffer injury and damage.
- 4
- 5 88. Enforcement of the DIS Policy against Augusto has caused and
- 6 continues to cause Augusto to suffer injury and damage.
- 7
- 8 89. Enforcement of the DIS Policy against Normandy has caused and
- 9 continues to cause Normandy to suffer injury and damage.
- 10 90. The damages and injuries suffered by Auto Marine, Senoran,
- 11 Benjamin, Augusto, and Normandy, individually, as a direct and
- 12 proximate result of Sablan's acts, actions and omission in connection
- 13 with the DIS Policy are recoverable pursuant to 42 U.S.C. § 1983.
- 14
- 15 91. Sablan's acts, actions, and omissions in connection with the DIS
- 16 Policy were willful, intentional, or in reckless disregard for the equal
- 17 protection rights of Auto Marine, Senoran, Benjamin, Augusto, and
- 18 Normandy thereby entitling each plaintiff to punitive damages.
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FOURTH CLAIM FOR RELIEF

92. Auto Marine, Senoran, Benjamin, Augusto, and Normandy each

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hereby alleges and incorporates ¶¶ 1- 91.

93. At all times relevant herein, Lizama was acting under color of Commonwealth law.

94. Lizama authorized, condoned, and acquiesced in this DIS policy.

95. The DIS policy authorized, condoned, and acquiesced in by Lizama ignores, disregards or otherwise tramples upon the equal protection rights and liberty interests of Auto Marine, Senoran, Benjamin, Augusto, and Normandy.

96. Auto Marine, Senoran, Benjamin, Augusto, and Normandy each possessed a right to be free from discrimination in employment based solely on alienage in absence of a compelling state interest.

97. Lizama knew or should have known that the DIS policy was discriminatory and in violation of the equal protection clause of the 14th Amendment.

98. Lizama knew or should have known that enforcing the DIS Policy would cause harm and injury to alien employees lawfully with in the Commonwealth as well as the employers of aliens lawfully allowed to work in the Commonwealth.

99. Lizama's conduct of enforcing the DIS Policy against Auto Marine

1 and its alien employees has caused and continues to cause Auto
2 Marine to suffer injury and damage.

3
4 100. Lizama's enforcement of the DIS Policy against Senoran has caused
5 and continues to cause Senoran to suffer injury and damage.

6 101. Lizama's enforcement of the DIS Policy against Benjamin has
7 caused and continues to cause Benjamin to suffer injury and damage

8
9 102. Lizama's enforcement of the DIS Policy against Augusto has caused
10 and continues to cause Augusto to suffer injury and damage

11 103. Lizama's enforcement of the DIS Policy against Normandy has
12 caused and continues to cause Normandy to suffer injury and damage

13
14 104. The damages and injuries suffered by Auto Marine, Senoran,
15 Benjamin, Augusto, and Normandy, individually, as a direct and
16 proximate result of Lizama's enforcement of the DIS Policy are
17 recoverable pursuant to 42 U.S.C. § 1983.
18

19
20 105. Lizama's acts, actions, and omissions in connection with the DIS
21 Policy were willful, intentional, or in reckless disregard for the 14th
22 Amendment equal protection rights of Auto Marine, Senoran,
23 Benjamin, Augusto, and Normandy thereby entitling each plaintiff to
24 punitive damages.
25
26

FIFTH CLAIM FOR RELIEF

106. Auto Marine hereby alleges and incorporates paragraphs 1- 105 of this amended complaint.

107. Lizama, at all times relevant herein, was acting under color of Commonwealth law.

108. Lizama, together with others unknown, conspired between and among themselves to directly or indirectly use Lizama's position with DIS to disrupt Auto Marine's business.

109. As part of this conspiracy, Lizama would target Auto Marine's alien employees and bring or cause deportation and/or criminal proceedings being brought against Auto Marine's president as well as its alien employees.

110. In furtherance of this conspiracy, Lizama committed overt acts which include but are not limited to:

- A. Arresting Senoran
- B. Arresting Benjamin
- C. Arresting Augusto

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- D. Arresting Normandy,
- E. Causing the institution of deportation proceedings against Senoran;
- F. Causing the institution of deportation proceedings against Benjamin;
- G. Causing the institution of deportation proceeding against Augusto;
- H. Causing the institution of deportation proceedings against Normandy; and
- I. Causing the institution of criminal prosecution against Adonis.

88. The above acts resulted in Auto Marine, Senoran, Benjamin, Augusto, and Normandy being deprived of equal protection of the law in violation of the 14th Amendment and the denial of equal privileges and immunities.

111. Auto Marine, Senoran, Benjamin, Augusto, and Normandy would not have been subject to such deprivation of equal protection, equal privileges and immunities, unreasonable seizure and deprivation of property interests except for the fact that Adonis, Senoran, Benjamin,

1 117. The forth amendment to the United States Constitution prohibits
2 unreasonable seizure of a person.

3 118. Lizama omitted material information in submitting his declaration of
4 the arrest warrants for Senoran, Benjamin, Augusto and Normandy.
5

6 119. If Lizama had included the material information he omitted, his
7 declaration would not have established probable cause for issuance of
8 a warrant for the arrest of Senoran, Benjamin, and Augusto.
9

10 120. The omitted information includes but is not limited to the following:

11 A. Advising that Senoran possessed a USCG license
12 which allowed him to operate boats owed by
13 Auto Marine;
14

15 B. Benjamin's employment contract as approved by
16 the Director of Labor allowed him to operate or
17 drive a boat;
18

19 C. Augusto's employment contract as approved by
20 the Director of Labor allowed him to operate or
21 drive a boat and vehicles as necessary;
22

23 D. Respondent did not make any effort to ascertain
24 or determine the identity of any person who
25
26

1 Augusto, and Normandy were each aliens within the Commonwealth
2 employed by Auto Marine.

3
4 112. The conspiracy between Lizama and others unknown violated's Auto
5 Marine's, Senoran's, Benjamin's, Augusto's, and Normandy's rights
6 secured by 42 U.S.C. § 1985(3).

7
8 113. The conspiracy has caused and continues to cause Auto Marine,
9 Senoran, Benjamin, Augusto, and Normandy to suffer injury and
10 damage.

11
12 114. Lizama's acts and conduct in connection with the conspiracy and the
13 violation of plaintiffs right to equal protection, and right to equal
14 privileges and immunities were willful, deliberate, and intentional
15 thereby entitling Auto Marine, Senoran, Benjamin, Augusto, and
16 Normandy, severally, to punitive damages.
17
18

19
20 **SIXTH CLAIM FOR RELIEF**

21
22 115. Senoran, Benjamin, Augusto and Normandy hereby allege and
23 incorporate paragraphs 1- 110 of this amended complaint.

24
25 116. At all times relevant herein, Lizama acted under color of
26 Commonwealth law.

1 allegedly was a passenger on any boat claimed to
2 have been driven or operated by Senoran,
3 Benjamin, Augusto, or Normandy.
4

5 E. In not ascertaining the identity of any alleged
6 passenger, Lizama did not know and had no way
7 of knowing whether such person was, in fact, a
8 tourist.
9

10 F. Upon information and belief, he had ulterior
11 motives in seeking the arrest warrants for
12
13 Senoran, Benjamin, Augusto and Normandy.
14

15 121. Omitting material information from each arrest warrant render the
16 seizure of Senoran, Benjamin, Augusto and Normandy unreasonable
17 and a violation of the Fourth Amendment.
18

19 122. The unreasonable seizure of has caused and continues to cause Auto
20 Marine, Senoran, Benjamin, Augusto and Normandy to suffer injury
21 and damage
22

23 123. The damages and injuries suffered by Auto Marine, Senoran,
24 Benjamin, Augusto, and Normandy, individually, as a direct and
25 proximate result of the unreasonable seizures resulting from Lizama
26
27
28

1 omitting material information are recoverable pursuant to 42 U.S.C.
2 § 1983.

3
4 124. Lizama's acts, actions, and omissions in connection with the issuance
5 of the arrest warrants were willful, intentional, or in reckless
6 disregard for the 4th Amendment rights of Auto Marine, Senoran,
7 Benjamin, Augusto, and Normandy thereby entitling each plaintiff to
8 punitive damages.
9

10
11 **PRAYER OF RELIEF**

12
13 Wherefore, plaintiffs pray for relief as follows:

14 **FIRST CLAIM FOR RELIEF**

- 15
16 1. Declaratory relief in favor of Auto Marine declaring 3 CMC §
17 4434(e)(1) unconstitutional and unenforceable.
18
19 2. Injunctive relief enjoining Grey, in his official capacity, from
20 enforcing 3 CMC § 4434(e)(1)
21
22 3. Cost of suit including reasonable attorneys fees; and
23
24 4. Such other and further relief as the court deems just and proper.
25
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SECOND CLAIM FOR RELIEF

1. Declaratory relief in favor of Auto Marine declaring 3 CMC § 4434(e)(1) unconstitutional and unenforceable.
2. Injunctive relief enjoining Grey, in his official capacity, from enforcing 3 CMC § 4434(e)(1)
3. Cost of suit including reasonable attorneys fees; and
4. Such other and further relief as the court deems just and proper.

THIRD CLAIM FOR RELIEF

1. Compensatory damages in an amount to be proved at trial against Sablan, personally, in favor of Auto Marine, Senoran, Benjamin, Augusto, and Normandy, severally;
2. Punitive Damages of at least \$50,000.00 each Auto Marine, Senoran, Benjamin, Augusto, and Normandy against Sablan, personally;
3. Cost of suit including reasonable attorneys fees; and
4. Such other and further relief as the court deems just and proper.

FOURTH CLAIM FOR RELIEF

1. Compensatory damages in an amount to be proved at trial against

1 Lizama, personally, in favor of Auto Marine, Senoran, Benjamin,
2 Augusto, and Normandy, severally;

3 2. Punitive Damages of at least \$50,000.00 each for Auto Marine,
4 Senoran, Benjamin, Augusto, and Normandy against Lizama,
5 personally;

6
7 3. Cost of suit including reasonable attorneys fees; and

8
9 4. Such other and further relief as the court deems just and proper.
10

11 **FIFTH CLAIM FOR RELIEF**
12

13 1. Compensatory damages in an amount to be proved at trial against
14 Sablan, personally, in favor of Auto Marine, Senoran, Benjamin,
15 Augusto, and Normandy, severally;

16
17 2. Punitive Damages of at least \$50,000.00 each for Auto Marine,
18 Senoran, Benjamin, Augusto, and Normandy against Sablan,
19 personally;

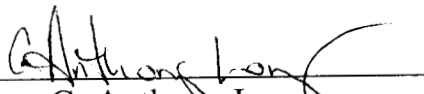
20
21 3. Cost of suit including reasonable attorneys fees; and

22
23 4. Such other and further relief as the court deems just and proper.
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SIXTH CLAIM FOR RELIEF

1. Compensatory damages in an amount to be proved at trial against Lizama, personally, in favor of Auto Marine, Senoran, Benjamin, Augusto, and Normandy, severally;
2. Punitive Damages of at least \$50,000.00 each for Auto Marine, Senoran, Benjamin, Augusto, and Normandy against Lizama, personally;
3. Cost of suit including reasonable attorneys fees; and
4. Such other and further relief as the court deems just and proper.

Law Office of G. Anthony Long

By: 
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